



In The  
Supreme Court of the United States  
October Term, 1986

GLOBE LIFE INSURANCE COMPANY,  
RYAN INSURANCE GROUP, INC. and  
COMBINED INTERNATIONAL CORPORATION,  
*Petitioners,*

*vs.*

ED MINIAT, INC., SOUTH  
CHICAGO PACKING COMPANY, RONALD  
M. MINIAT and EDMUND M. MINIAT, JR.,  
*Respondents.*

ON WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR  
THE SEVENTH CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION  
TO THE GRANTING OF THE PETITION FOR A  
WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTION PRESENTED

Whether the United States Court of Appeals for the Seventh Circuit erred in determining that the district court misapplied the legal standard of review for a motion to dismiss.

## COUNTERSTATEMENT OF THE CASE

This suit was filed by plaintiff individuals and corporations<sup>1</sup> complaining that their employee welfare benefit plan was wrongfully terminated by the defendants in violation of the Employee Retirement Income Security Act (ERISA). Alleging federal jurisdiction under ERISA, plaintiffs sued the defendant insurance companies. Plaintiffs' essential claim is twofold: (1) the defendants, Globe Life Insurance Co. and Ryan Insurance Group, Inc., entered the Retired Lives Reserve insurance market, implied and represented to the public and to plaintiffs that they would provide reserve life policies and administer such policies in conformity with current industry standards, and would conduct this type of business and service the policies on a long term basis to present and future qualified employees; and (2) once plaintiffs had purchased defendants' product, defendants terminated the policies, kept a preponderance of the premiums and left the market before additional employees became eligible for participation in the retirement plan.

Defendants sought dismissal on the grounds that plaintiffs had failed to state a claim. In particular, they asserted that plaintiffs' complaint was deficient in alleging an employee benefit plan. The district court granted defendants' motion to dismiss.

On-appeal to the Court of Appeals for the Seventh Circuit, the court ruled that the district court misapplied the legal standard for determining adequacy of the amended complaint because it failed to consider the allegations of the complaint as true. The court further determined that the amended complaint adequately alleged that corporate plaintiffs had standing to bring the suit

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<sup>1</sup> Respondents that are corporations are Ed Miniatt, Inc. an Illinois corporation and South Chicago Packing Co., which is successor-in-interest to Ed Miniatt, Inc.

as fiduciaries under ERISA, that individual plaintiffs had ERISA standing as plan beneficiaries, and that Globe was an ERISA fiduciary. The court of appeals reversed the district court's dismissal of plaintiffs' amended complaint and remanded the case for further proceedings. Defendants' petition for rehearing was denied by the court of appeals. Thereafter, defendants filed their petition for certiorari with this court.

This brief in opposition to the petition for a writ of certiorari is filed on behalf of respondents.

## SUMMARY OF ARGUMENT

The petition for a writ of certiorari should be denied because no reasons supporting a grant of discretionary review are present in this case.

## ARGUMENT

### 1. This case is not ripe for review.

Review at this time is inappropriate because the factual record for determining whether the defendant insurance companies were fiduciaries has not been developed in the trial court. Defendants have not answered the complaint and no discovery has taken place. Citing no legislative history, petitioners claim that their performance of the function of plan administration is insufficient to deem them fiduciaries. In effect, petitioners are seeking a ruling by this Court that an insurance company cannot be deemed a fiduciary under ERISA regardless of the facts alleged. Such a ruling would run counter to the broad remedial scope of ERISA.

### 2. Cases relied on by petitioners are inapposite.

Petitioners claim that the decision below is inconsistent with *Massachusetts Mutual Life Insurance Co. v. Russell*, 473 U.S. 134 (1985). In *Russell*, the Court held that no private right of action accrued to a plan participant or beneficiary for extra-contractual compensatory or punitive damages caused by improper or untimely processing of claims benefits by a fiduciary. In the instant case, the corporate plan administrator and participants are seeking enforcement of fiduciary obligations of the plan fiduciary. The types of claims being asserted against the fiduciary are claims based on express statutory remedies of ERISA and are not private implied rights.

Likewise, this Court's decision in *National Labor Relations Board v. Amax Co.*, 453 U.S. 322 (1980) is inapposite. There, the issue before the Court was whether a



trustee of a trust fund created under the National Labor Relations Act is a representative for purposes of that Act. In the instant case, there is no labor law issue nor any other matters remotely connected with matters at issue in *Amar*.

**3. There is no conflict among the circuit courts.**

The Seventh Circuit's decision comports fully with a recent decision by the Court of Appeals for the Ninth Circuit. In *Credit Managers Association v. Kennesaw Life and Accident Insurance Co.*, 809 F.2d 617 (9th Cir. 1987), the district court had granted summary judgment on the grounds, *inter alia*, that an insurer issuing insurance coverage to medical benefit trusts was not an ERISA plan fiduciary. The circuit court reversed, holding that the record available to the district court contained enough evidence of the insurer's discretionary authority over administration of the plan assets to survive a motion for summary judgment. There, as here, the circuit court properly required the development of a full record in the trial court before entering a ruling on the issue of fiduciary status.

**CONCLUSION**

For all the foregoing reasons, we respectfully request the Court to deny the petition for a writ of certiorari.

Respectfully submitted,

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